

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3802 of 1997

with

CIVIL APPLICATION No 8032 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No.

SUBHODDBHAI MANIBHAI AMIN

Versus

DEPUTY EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 3802 of 1997
MR BN RAVAL for Petitioner
MR TUSHAR MEHTA for Respondent No. 1
2. Civil Application No 8032 of 1997
MR TUSHAR MEHTA for Petitioner
MR BN RAVAL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/06/98

ORAL JUDGEMENT

This petition under Article 226 of the

Constitution is filed by an agriculturist whose land is adversely affected on account of the respondent-Gujarat Electricity Board erecting towers for transmission of electricity through electricity sub lines for 220 KV supply from Dehgam (Khanpur) to Kathvada Sub Station of Ahmedabad Electricity Co. Ltd. In the petition, the petitioner has challenged the power of the Electricity Board to lay any electric lines in such a manner as to destroy the trees standing on the land of the petitioner and also requiring the petitioner not to use a portion of his land over which the electric lines would pass and also upto a particular distance from those electric lines. The petitioner has also made a grievance that the respondents had not paid any compensation to the petitioner for depriving the petitioner of the trees and of use of the land.

2. In response to the notice issued by this Court, the Gujarat Electricity Board has appeared and contested the petition and contended that it has the necessary powers under the provisions of Section 42 of the Electricity (Supply) Act, 1948 and Section 51 of the Indian Electricity Act, 1910 read with the Government notification dated 5.3.1966 issued under Section 51 of the 1910 Act. The respondents had also filed Civil Application No. 8032 of 1997 praying for vacating/modifying the ad-interim relief which was granted by this Court while issuing notice. This Court had earlier on 24.10.1997 passed the following ad-interim order without prejudice to the rights and contentions of the parties :-

"(i) On condition that the respondent-GEB deposits an amount of Rs. 50,000/- in this Court within one month from today, the ad-interim order requiring the respondent-GEB to maintain status-quo shall stand vacated after deposit of the aforesaid amount in this Court.

(ii) It is further directed that the respondent-GEB shall ensure that minimum damage is caused to the land and the trees.

(iii) The petitioner will be entitled to keep the trees which are cut from the petitioner's land.

(iv) After the amount is deposited, the petitioner shall be permitted to withdraw

the same, on filing an undertaking in this Court to abide by any order that may be passed by this Court."

3. The matter has reached hearing today and with the consent of the learned counsel for the parties, the matter is taken up for final disposal. Hence, Rule is issued and Mr Tushar Mehta, learned counsel for the respondents has waived service of Rule.

4. Having heard the learned counsel for the parties and in view of the provisions of Section 42 of the Electricity (Supply) Act, 1948 and Section 51 of the Indian Electricity Act, 1910 read with Government notification dated 5.3.1966 annexed to the affidavit in reply filed on behalf of the respondents, read with the provisions of Sections 10 and 16 in Part III of the Indian Telegraph Act, 1885, this Court is of the view that the Gujarat Electricity Board has the same powers which are conferred on the Telegraph Authority under the provisions of Sections 10 and 11 of the Indian Telegraph Act, 1885 for the purpose of placing wires, poles, wall-brackets, stays, apparatus and appliances for the transmission and distribution of electricity and, hence, the challenge made in the petition to the power of the respondents to enter the petitioner's land and to install the electric wires and electricity poles/towers in such a manner as to affect the petitioner's use of his own land or the action of the respondents resulting into cutting trees standing on the petitioner's land must fail. In other words, the Gujarat Electricity Board does have the power to take all the necessary steps and to carry out the aforesaid activities. The petitioner's prayer for a declaration that the respondents have no such power is, therefore, rejected.

5. However, the next question is whether the respondents could have taken the aforesaid action without paying or offering compensation to the petitioner. As stated above, earlier this Court had passed ad-interim order requiring the respondent-Gujarat Electricity Board to deposit an amount of Rs. 50,000/- in this Court before taking any action so as to affect the petitioner's use of the land and before cutting the 500 trees lying on the petitioner's land. That order was passed without prejudice to the rights and contentions of the parties and today Mr Rawal, learned counsel for the petitioner has submitted that the respondent-Board has already laid down the electricity lines and towers adversely affecting the petitioner's use of the land and also removed about 2000 nilgiri trees which has caused substantial loss to

the petitioner running into lakhs of rupees.

6. On the other hand, Mr Mehta, learned counsel for the respondents has strongly opposed the above submissions. Mr Mehta has further invited my attention to the provisions of Sections 10 and 16 of the Indian Telegraph Act. As per the said provisions where the authority exercises the powers for laying wires and poles in the process causing damage to the property of a private person, the authority is required to pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of the powers by the authority. Sub-sections (3), (4) and (5) of Section 16 of the Indian Telegraph Act are relevant in this behalf and they are required to be quoted verbatim.

"(3) If any dispute arise concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interest are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final :

Provided that nothing in this sub-section shall affect the right of any

person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same."

7. In rejoinder, the learned counsel for the petitioner has submitted that the petitioner is sought to be dragged into the protracted litigation for claiming an amount which the respondents ought to have paid before removing the trees or before depriving the petitioner of use of his land.

8. Having heard the learned counsel for the parties, this Court is of the view that the interest of justice would be served if the petitioner is relegated to the statutory and efficacious alternative remedy available to him under the provisions of Section 16 of the Indian Telegraph Act, 1885 read with the provisions of Section 42 of the Electricity (Supply) Act, 1948 and Section 51 of the Indian Electricity Act, 1910 alongwith the notification issued thereunder. On a conjoint reading of the aforesaid statutory provisions, it is clear that the Gujarat Electricity Board not only gets the powers conferred on the Telegraph Authority under the provisions of Indian Telegraph Act, 1885, but the Electricity Board is also subject to the liabilities fastened by the Telegraph Act on the Telegraph Authority. Accordingly, the respondents are bound to pay full compensation to the petitioner either as agreed between the parties or as determined by the Court of the learned District Judge, Ahmedabad (Rural) under Section 16(3) of the Indian Telegraph Act, 1885 read with the relevant provisions of the Electricity (Supply) Act, 1948 and Indian Electricity Act, 1910.

9. It is further required to be noted that while passing order on 24.10.1997, this Court was informed on behalf of the respondents that they were likely to remove only about 500 trees and, therefore, the Court had required the respondents to deposit an amount of Rs. 50,000/- in this Court without prejudice to the rights and contentions of the parties. However, now it is brought to the notice of the Court that the respondents have cut a larger number of trees but there is some dispute about the exact number of trees cut. Hence, this Court thinks it just and proper to direct the respondents to deposit a further sum of Rs. 50,000/- (Rupees Fifty thousand only) in this Court over and above the amount of Rs. 50,000/- deposited by the respondents earlier on 12.11.1997 as acknowledged by the Registry on 28.11.1997. By the earlier order, the petitioner was permitted to

withdraw the amount of Rs. 50,000/- which was to be deposited by the Board before undertaking the operation of cutting trees and installing electric lines. However, the learned counsel for the petitioner states that the amount was not withdrawn by the petitioner lest it might be understood that the petitioner has accepted the amount of Rs. 50,000/- as full compensation. It is, therefore, clarified that without prejudice to the rights and contentions of the parties, the petitioner is permitted to withdraw the amount of Rs. 50,000/- already deposited by the respondents on 12.11.1997 and the further amount of Rs. 50,000/- which the respondents will deposit in this Court within 15 days from today.

10. It is accordingly declared that it will be open to the petitioner to lodge his claim for compensation with the respondents. In case the respondents dispute the claim lodged by the petitioner (which they are likely to do as is being stated by Mr Mehta, learned counsel for the respondents), the respondents shall refer the petitioner's claim to the Court of the learned District Judge, Ahmedabad (Rural) and the learned District Judge, after giving notice to the parties and hearing them, shall determine the amount. In case the respondents dispute the claim lodged by the petitioner, the respondents shall refer the petitioner's application to the Court of the learned District Judge, Ahmedabad (Rural) within one month from the date of the receipt of the petitioner's application and the learned District Judge shall decide the same within six months from the date of filing of the application before him.

In case the respondents do not refer the dispute to the Court of the learned District Judge within one month from the date of receipt of the application nor do they agree to pay the amount of compensation claimed by the petitioner, it will be open to the petitioner to file such an application before the Court of the learned District Judge, Ahmedabad (Rural).

11. The respondents are hereby directed to deposit in this Court within a period of fifteen days from today, a further sum of Rs. 50,000/- without prejudice to the

rights and contentions of the parties over and above the sum of Rs. 50,000/- deposited by the respondents earlier in this Court on 12.11.1997.

12. The petitioner shall be permitted to withdraw the

aforesaid amounts (Rs. 50,000/- + Rs.50,000/-) after the petitioner files an undertaking in this Court that withdrawal of the aforesaid amount shall abide by the adjudication that will be made by the Court of the learned District Judge as per the aforesaid statutory provisions, without prejudice to the rights and contentions of the parties and subject to the petitioner's right to have further recourse in accordance with law in case the petitioner is aggrieved by the determination to be made by the Court of the learned District Judge.

13. It is clarified that the deposit of the aforesaid amounts by the respondents and the withdrawal thereof by the petitioner shall be without prejudice to the rights and contentions of the respective parties and the learned District Judge shall determine the amount of compensation as per the aforesaid provisions of law without being influenced by the amount/s which this Court had tentatively stipulated as a purely ad-hoc measure.

14. The petition is accordingly disposed of in terms of the aforesaid directions.

Rule is made absolute to the aforesaid extent with no order as to costs.

12. Civil Application also stands disposed of.

June 19, 1998 (M.S. Shah, J.)